



Eckert Seamans Cherin & Mellott, LLC  
1717 Pennsylvania Avenue, N.W.  
12<sup>th</sup> Floor  
Washington, D.C. 20006

TEL: 202 659 6600  
FAX: 202 659 6699  
www.eckertseamans.com

Charles A. Zdebski  
Phone: 202-659-6605  
czdebski@eckertseamans.com

November 24, 2014

**Via Hand Delivery**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth  
Telephone Company, et al. v. UGI Utilities – Electric Division  
File No. EB-14-MD-007

Dear Secretary Dortch:

Enclosed please find an original and four copies of Defendant UGI Utilities, Inc. – Electric Division's Motion to Establish Case Schedule for filing with the Commission in the above-referenced matter. Please date stamp the fifth copy of this Motion as having been received by your office and return it to the courier in attendance.

Thank you for your assistance in this matter.

Sincerely,



Charles A. Zdebski

*Counsel for UGI Utilities – Electric Division*

CAZ/lje

Encls.

cc: Service List

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

COMMONWEALTH TELEPHONE COMPANY	)	
d/b/a FRONTIER COMMUNICATIONS	)	
COMMONWEALTH TELEPHONE COMPANY and	)	
CTSI, LLC d/b/a FRONTIER COMMUNICATIONS	)	
CTSI COMPANY	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EB-15-MD-007
	)	
UGI UTILITIES, INC. – ELECTRIC DIVISION	)	
	)	
Respondent.	)	

**RESPONDENT UGI UTILITIES, INC. - ELECTRIC DIVISION'S  
MOTION FOR LEAVE TO FILE**

Respondent UGI Utilities, Inc. – Electric Division (“UGI”), by and through its attorneys, respectfully submits this Motion for Leave to File and requests that the Bureau grant UGI leave to submit the accompanying Motion to Establish Case Schedule which asks that the Bureau: (i) confirm that it will issue a ruling in this matter no later than one hundred twenty (120) days from the date of the order of the Court of Common Pleas, Dauphin County, Pennsylvania (“Dauphin County Court” or “Court”) staying the state court litigation between the parties; *i.e.*, no later than March 7, 2015, or in the alternative, (ii) promptly stay this matter or dismiss it without prejudice pending the resolution of the parties’ dispute before the Dauphin County Court.

1. As previously discussed in the parties’ filings with the Commission in this matter and also as more fully explained in the attached Motion to Establish Case Schedule, the parties in this proceeding are also involved in related litigation before the Court. The Court recently stayed the parties’ state court litigation for one hundred twenty (120) days. The Dauphin County Court gave the parties specific direction as to what may occur if the present proceeding before the

Commission is unresolved after the stay period: "Either party may thereafter list this matter for trial." *See* Dauphin County Court Order dated November 7, 2014, attached as Exhibit A to accompanying Motion to Establish Case Schedule.

2. The Court's stay order and Frontier's litigation strategy have left the parties without any current case schedule or established timeframe to provide clarification and certainty as to the parties' rights and obligations. In addition, Frontier has engaged in unlawful self-help resulting in its underpaying UGI nearly Eight Hundred Thousand Dollars to date. As this pattern continues into next year, Frontier's self-help underpayments will climb to over One Million Dollars.

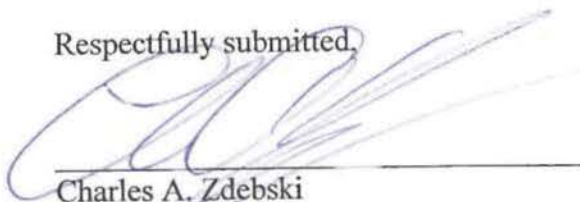
3. Good cause therefore exists to permit the filing and consideration of the Motion to Establish Case Schedule. UGI is aware that the Commission has limited resources and innumerable policy, rulemaking, inquiry and other proceedings which demand the dedication of those resources. To the extent that the press of the Commission's business does not allow the Bureau to address this matter fully before March 7, 2015, the Bureau can hold this proceeding in abeyance pending the resolution of the parties' state-court litigation or dismiss UGI's Complaint without prejudice.

4. In the accompanying Motion to Establish Case Schedule, UGI requests simply that the Bureau declare that it will be able to make a timely ruling by March 7, 2015 or, if it will be prevented from doing so, issue a ruling stating so now rather than awaiting the expiration of the state-court litigation stay. In doing so, the Bureau would provide a clear timeframe for the resolution of the parties' dispute and a horizon for the clarification and regulatory certainty both parties seek. Such an order will also avoid the Commission, the Dauphin County Court and both parties from incurring additional expense and delay in the matters at issue.

5. UGI therefore believes it is efficient and reasonable to address this timing issue through the accompanying motion so that the parties may proceed to resolve their dispute and clarify their legal and regulatory rights and obligations as efficiently and promptly as possible. Good cause thus exists to grant this motion for leave.

For the foregoing reasons, UGI respectfully requests that the Commission grant it leave to file the attached Motion to Issue Ruling.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'C. Zdebski', is written over a horizontal line.

Charles A. Zdebski  
Brett Heather Freedson  
Robert J. Gastner  
ECKERT SEAMANS CHERIN & MELLOTT, LLC  
1717 Pennsylvania Avenue, N.W.  
Suite 1200  
Washington, D.C. 20006  
Phone: (202) 659-6605  
Fax: (202) 659-6699  
*Counsel to UGI Utilities, Inc.-Electric Division*



### CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2014, I caused a copy of the foregoing Motion for Leave to File to be served on the following by hand delivery, Federal Express, or U.S. mail (as indicated):

Joseph J. Starsick  
Associate General Counsel  
Frontier Communications  
1500 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25314  
(Via Federal Express & U.S. Mail)

Christopher S. Huther  
Claire J. Evans  
WILEY REIN LLP  
1776 K Street, NW  
Washington, DC 20006  
(Via Hand Delivery & U.S. Mail)

David H. Solomon  
WILKINSON BARKER KNAUER, LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037  
(Via Hand Delivery & U.S. Mail)

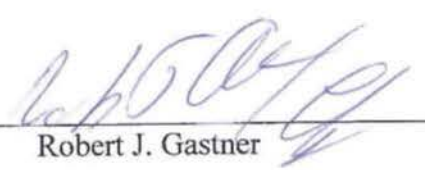
Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
(Via Hand Delivery)

Lia Royle  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Christopher Killion  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utilities Commission  
400 North Street  
Commonwealth Keystone Building  
Harrisburg, PA 17120  
(Via U.S. Mail)

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
(Via U.S. Mail)

  
Robert J. Gastner

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

COMMONWEALTH TELEPHONE COMPANY	)	
d/b/a FRONTIER COMMUNICATIONS	)	
COMMONWEALTH TELEPHONE COMPANY and	)	
CTSI, LLC d/b/a FRONTIER COMMUNICATIONS	)	
CTSI COMPANY	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EB-15-MD-007
	)	
UGI UTILITIES, INC. – ELECTRIC DIVISION	)	
	)	
Respondent.	)	

**MOTION TO ESTABLISH CASE SCHEDULE**

Defendant, UGI Utilities, Inc. – Electric Division (“UGI”), by and through its attorneys, respectfully submits this Motion to Establish Case Schedule, and requests that the Bureau: (i) issue an order confirming that it will issue a decision on the merits in this matter on or before March 7, 2015; or in the alternative, (ii) promptly stay this matter or dismiss it without prejudice and allow the parties to resolve their dispute before the Court of Common Pleas, Dauphin County, Pennsylvania (“Court” or “Dauphin County Court”). In support of this Motion, UGI states as follows:

1. The instant dispute between UGI, and Commonwealth Telephone Co., LLC d/b/a Frontier Communications Commonwealth Telephone Co. (“Commonwealth”) and CTSI, LLC d/b/a Frontier Communications CTSI Co. (“CTSI”) (together “Frontier” or “Complainants”) dates back to a request by Frontier to re-negotiate the rates, terms and conditions set forth in the joint-use agreement between UGI and Commonwealth.

2. Frontier asserted that it had based its renegotiation request on the Commission's issuance of the 2011 Pole Attachment Order.<sup>1</sup> Response<sup>2</sup> p. 3. However, when UGI engaged Frontier in rate-related discussions, Frontier made little or no attempt to respond to the terms and conditions of attachment proposed by UGI. *Id.* Moreover, Frontier began engaging in self-help and refused to pay the full amount of pole attachment fees owed to UGI under the parties' existing agreements. *Id.*

3. Because UGI received no response to its repeated attempts at settlement, on or about February 12, 2014, it filed suit against Frontier in Pennsylvania state court (Court of Common Pleas, Dauphin Co., Penn., Case No. 2014-CV-1236) ("Dauphin County Complaint"). Response p. 4-5. The Dauphin County Complaint alleges breach of contract by Commonwealth, and CTSI, respectively, and unjust enrichment, and requests damages in the amounts equal to Frontier's unpaid pole attachment fees for calendar years 2012 and 2013, as calculated at the rate set forth in the parties' agreements. *Id.*

4. On or about May 14, 2014, Frontier filed its Complaint in the above-captioned proceeding.<sup>3</sup>

5. On or about June 4, 2014, Frontier filed a brief in support of its preliminary objections to UGI's Dauphin County Complaint. Among other arguments, Frontier asserted that the Dauphin County Court should defer adjudication of the parties' dispute to the Commission based on the doctrine of primary jurisdiction or dismiss the Dauphin County Complaint.

---

<sup>1</sup> *In the Matter of Implementation of Section 224 of the Act*, 26 FCC Red 5240 (April 7, 2011) ("Pole Attachment Order" or "2011 Pole Attachment Order").

<sup>2</sup> Respondent UGI Utilities, Inc. - Electric Division's Response to Complaint, File No. EB-12-MD-004 (filed August 25, 2014)("Response").

<sup>3</sup> Pole Attachment Complaint, File No. EB-12-MD-004 (filed May 14, 2014)("FCC Complaint").



6. On or about November 6, 2014, the Dauphin County Court sustained Frontier's preliminary objections in part and stayed the proceeding, but only for the limited time of one hundred twenty (120) days from the court's order. *See* Dauphin County Order attached hereto as Exhibit A. However, the Dauphin County Court denied Frontier's request to dismiss the complaint and specifically noted that it would proceed with the resolution of the case if the Commission does not resolve the parties' dispute within the 120 day time frame. *Id.*

7. Significantly, UGI and Commonwealth, and UGI and CTSI, respectively, continue to operate pursuant to their existing joint use, and pole license agreements, and neither UGI, nor Commonwealth has terminated the January 1, 1931 joint use agreement or taken any action regarding the pole license agreements. Response p. 7. To date, Commonwealth and CTSI continue to maintain attachments on UGI's poles. *Id.* However, beginning for calendar year 2012, both Commonwealth and CTSI have refused to make full payment of those pole attachment fees due under their respective joint use and license agreements. *Id.*

8. As of this date, Commonwealth and CTSI owe UGI \$599,741.26 and \$197,700.02, respectively, for annual pole attachment rental fees for 2012, 2013 and 2014, as calculated at the rate set forth in the parties' agreements. Because Frontier continues to maintain attachments on UGI's poles, UGI's damages increase significantly with each passing month. Any prolonged delay in the resolution of the parties' dispute will result in significant financial harm to UGI.

9. UGI therefore respectfully requests that the Bureau confirm that it will issue a substantive ruling resolving the parties' dispute within 120 days of the Dauphin County Court's Order; *i.e.*, by March 7, 2015.

10. To the extent that the Bureau does not have sufficient resources to fully resolve this matter within that time frame, UGI alternatively requests that the Bureau either dismiss Frontier's Complaint without prejudice or hold this proceeding in abeyance pending the resolution of the parties' state-court litigation.

11. In its 2011 Pole Attachment Order, the Commission explicitly rejected the notion that it would serve as the sole permissible venue with respect to pole attachment disputes and made it clear that there remained a role for the resolution of such matters at the state level. Pole Attachment Order ¶ 220.

12. Moreover, the Bureau has previously granted similar requests to defer pole-attachment complaint proceedings to state forums. *See Frontier West Virginia Inc. v. Appalachian Power Co., et al.*, 29 FCC Rcd 1314, n. 6 (2014) (noting that the Bureau had held a pole-attachment complaint proceeding in abeyance pending the resolution of a related proceeding filed with the Public Service Commission of West Virginia).

13. In conclusion, if the Bureau is unable to resolve this matter during the time period of the stay imposed by the Dauphin County Court, there is no reason to engage the resources and time of both parties and the Commission by retaining jurisdiction when there is another forum that is appropriate and prepared to adjudicate the parties' conflict.

WHEREFORE, UGI respectfully requests that the Bureau expeditiously grant this motion, and either confirm that it will be able to issue a ruling in this matter by March 7, 2015, or in the alternative, promptly dismiss Frontier's Complaint without prejudice or stay Frontier's Complaint to allow the parties to resolve their dispute before the Court of Common Pleas, Dauphin County, Pennsylvania.

Respectfully submitted,



Charles A. Zdebski (czdebski@eckertseamans.com)  
Brett Heather Freedson (bfreedson@eckertseamans.com)  
Robert J. Gastner (rgastner@eckertseamans.com)  
**ECKERT SEAMANS CHERIN & MELLOTT, LLC**  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(Tel) 202.659.6605  
(Fax) 202.659.6699  
czdebski@eckertseamans.com  
*Counsel to UGI Utilities, Inc.*

### CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2014, I caused a copy of the foregoing Motion to Establish Case Deadline to be served on the following by hand delivery, Federal Express, or U.S. mail (as indicated):

Joseph J. Starsick  
Associate General Counsel  
Frontier Communications  
1500 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25314  
(Via Federal Express & U.S. Mail)

Christopher S. Huther  
Claire J. Evans  
WILEY REIN LLP  
1776 K Street, NW  
Washington, DC 20006  
(Via Hand Delivery & U.S. Mail)

David H. Solomon  
WILKINSON BARKER KNAUER, LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037  
(Via Hand Delivery & U.S. Mail)

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
(Via Hand Delivery)

Lia Royle  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Christopher Killion  
Enforcement Bureau  
Market Disputes Resolution Division  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
(Via Hand Delivery)

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utilities Commission  
400 North Street  
Commonwealth Keystone Building  
Harrisburg, PA 17120  
(Via U.S. Mail)

Kimberly D. Bose, Secretary  
Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  
(Via U.S. Mail)

A handwritten signature in black ink, appearing to read 'RJ Gastner', written over a horizontal line.

Robert J. Gastner



Copies Distributed

Date 11/7/14 Initials DMCUGI UTILITIES, INC. – ELECTRIC  
DIVISION,

Plaintiff

v.

COMMONWEALTH TELEPHONE  
COMPANY, LLC., d/b/a FRONTIER  
COMMUNICATIONS TELEPHONE  
COMPANY, CTSI, LCC., d/b/a  
FRONTIER COMMUNICATIONS CTSI  
COMPANY,

Defendants

: IN THE COURT OF COMMON PLEAS OF  
: DAUPHIN COUNTY, PENNSYLVANIA  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

NO. 2014 CV 1236 CV

: CIVIL ACTION – LAW  
: BREACH OF CONTRACT  
:  
:  
:  
:  
:  
:  
:  
:  
:2014 NOV - 7 PM 1:45  
DAUPHIN COUNTY  
PENNSYLVANIA  
**ORDER**

**AND NOW**, this 7<sup>th</sup> day of November, 2014, upon review of Defendant's Preliminary Objections to Plaintiff's Complaint and having heard Oral Argument from both parties, **IT IS HEREBY ORDERED** that the preliminary objections are **SUSTAINED** and the matter is **STAYED** for one hundred twenty (120) days. In the event that the FCC is unable to resolve the disputed rate issues during this stay, this matter shall proceed to court. Either party may thereafter list this matter for trial.

**BY THE COURT:**
  
 William T. Folly, J.
**DISTRIBUTION:**

Kevin M. Skjoldal, Esquire, 213 Market Street, Eighth Floor, Harrisburg, PA 17101  
 Brooks R. Foland, Esquire, 100 Corporate Center Dr., Ste. 201, Camp Hill, PA 17011  
 David H. Soloman, Esquire, 2300 N. Street, NW, Ste. 700,  
 Court Administration  
 Nativia P. Wood – Chief Court Reporter  
 FILE